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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. FLOYD STEVENSON MOODY, Defendant and Appellant.	B207068 (Los Angeles County Super. Ct. No. BA302643)

APPEAL from a judgment of the Superior Court of Los Angeles County, Judith L. Champagne, Judge. Affirmed.

Mark Alan Hart, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Michael R. Johnsen and Ana R. Duarte, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Floyd Stevenson Moody appeals his conviction of one count of first degree murder, contending there was insufficient evidence of premeditation to support the conviction and that the offense should be reduced to second degree murder. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Information*

Appellant was charged in a one-count information with the murder of his wife, Wanda Hutton.

B. *Evidence At Trial*

Appellant and Hutton were married in October 2005. They lived in her one-bedroom apartment, which was part of a four-plex. Hutton's twin sister, Tawanna Lyles, lived next door. In February 2006, Hutton's granddaughter, Monique Pearce, moved in with appellant and Hutton. On April 20, 2006, Hutton died. Appellant admitted that he hid Hutton's body and attempted to conceal his wife's death from her family until his arrest on May 10, 2006. The sole issue facing the jury during its deliberations concerned the circumstances and manner of Hutton's death.

1. *Prosecution Evidence*

a. *Testimony of Lyles and Pearce*

Hutton met appellant in July 2005 and married him in October 2005. Prior to the relationship, Hutton had been a regular churchgoer; after it began, Hutton stopped going to church. Prior to the relationship, Hutton spoke with her sister or her granddaughter nearly every day; afterward, she became less communicative

and less social. She did not regularly answer her telephone and often when she did, she used the speaker. She seemed unhappy and lost weight.

Lyles frequently heard loud arguments between appellant and Hutton and heard appellant call Hutton names. Lyles did not, however, hear appellant threaten Hutton or hit her. During the months Pearce lived with appellant and Hutton, Pearce did not observe any unusual arguing or any violence. When appellant was out, Hutton spent time with Pearce. However, when appellant was home, Hutton and appellant stayed in the bedroom with the door closed.

On April 20, 2006, Hutton awakened Pearce for work. When Pearce left, Hutton and appellant were together in the apartment. That evening at approximately 5:00 p.m., after Pearce returned from work, appellant called and said Hutton had lost her cell phone and that he and Hutton were going to Pechanga for the night. Appellant called Pearce the next day and said he and Hutton had won some money. During this call, he pretended to be having a conversation with Hutton about whether she wanted to talk to Pearce. When Pearce returned from work on April 22, there was a note on the dining room table written by appellant saying he and Hutton had won money at Pechanga and were looking for an apartment in Texas and that Hutton "didn't want . . . nobody in her business." Pearce became suspicious, however, because she noticed that Hutton's birds had not been fed and that Hutton's mail had not been opened or moved from the table.

On the morning of April 22, Lyles encountered appellant outside the apartment. Appellant said that he and Hutton had gone to Pechanga and won $1,400, but that Hutton had been unable to call Lyles because her cell phone died and she subsequently lost it. Appellant explained Hutton's absence that day by stating she had gone to pay the rent. Lyles became suspicious because the landlord had never given out his home address.

On April 23, Pearce and Lyles went into Hutton's bedroom. The answering machine in the bedroom had 57 messages on it. The bed was unmade and the fitted sheet was missing. The room was not otherwise in disarray and nothing was broken. None of Hutton's clothing or possessions appeared to be missing, including her medications, which were supposed to be taken daily. However, appellant's possessions were gone. Pearce called appellant's mother in Texas and was told that she (appellant's mother) had not heard from him or Hutton. During the week that followed, Pearce did not hear from appellant, but saw evidence that someone had been in the apartment while she was at work.

b. *Arresting Officers' Testimony*

Lyles reported Hutton missing on April 26. On May 10, police officers investigating Hutton's disappearance observed appellant driving her car. He was arrested and taken into custody. Appellant denied any connection with the car, although he had the keys in his possession and had been seen driving it. Police searched the car and found Hutton's body in the trunk, underneath luggage, clothing and the spare tire. There was also some type of bodily fluid staining the back seat. The odor of decomposition emanating from the car was quite strong. The body was encased in two large plastic bags; a third plastic bag was lying under it. In addition, a fitted bed sheet covered the body. There was a small burn hole on the sheet.

When appellant was arrested, he gave Hutton's name as the person to contact in case of emergency. He told the arresting officer that he had not seen Hutton for two months and that he was homeless.

c. *Medical Evidence*

Dr. Louis Pena performed the autopsy on Hutton. He found a condition known as "petechiae" -- pinpoint hemorrhages on the eyelids that often resulted from asphyxiation.[1] There was also swelling on her right eye and a hemorrhage on the left side of her face, both of which were likely caused by Hutton having been punched before she died. In addition, there was a hemorrhage on the right side of her neck caused by the application of pressure, which could have been the result of manual strangulation. That injury also occurred shortly before death. X-rays uncovered some injuries to her bones. Dr. Pena described bone injuries in her hand and left side as "acute" or recent. In addition, there were older fractures in her jaw, ribs, hands and foot. The jaw fracture had been wired.

Dr. Pena concluded that Hutton died of asphyxiation. He testified that rendering someone unconscious through asphyxiation would take 10 to 15 seconds if the individual were "normal." If continuous pressure were applied to the neck, death would occur within a minute. For someone in Hutton's health, the time between unconsciousness and death could have been shorter, possibly 30 seconds.[2] If the pressure had been released at any point, for example, if the victim struggled and temporarily broke free, the time would be extended.

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[1] Dr. Pena explained that asphyxiation occurs when the carotid arteries in the neck are compressed, depriving the brain of oxygen.

[2] Dr. Pena testified that Hutton had an enlarged heart, which would have accelerated the process of asphyxiation, and osteoporosis, which rendered her bones easier to fracture. Lyles testified that Hutton was borderline diabetic, had high blood pressure and had undergone surgery to remove part of her esophagus, treatment for cancer and bypass surgery. Pearce testified that Hutton smoked. Appellant testified that Hutton used a nebulizer to improve her breathing.

At the time of his arrest, appellant was six feet tall and weighed 270 pounds. Hutton weighed 120 or 125 pounds and was 5 feet 4 inches tall. She was 59 years old.

d. *Appellant's Prior Relationships*

i. *Tina Moody*

Appellant's daughter, Tarrah Hornsby, testified about appellant's relationship with her mother, Tina Moody, appellant's former wife. Hornsby recalled an incident in 1988 or 1989 when, during an argument, appellant hit Moody in the face and choked her. A few years later, Hornsby went into her parents' bedroom to say goodnight and saw Moody tied to the headboard. Moody looked frightened, but did not ask for help. Later that night, Hornsby heard appellant say: "If you try to leave, I'll kill you." The next morning, Moody had bruises on her face and arms. According to Hornsby, appellant and Moody fought frequently when they were together and appellant hit Moody at least once or twice a week.

ii. *Rosalind Mosby*

Rosalind Mosby testified that she grew up with appellant in Texas and began dating him in 1994. At the time, he was separated from Moody, to whom he was still married. During an argument that occurred near the end of 1994, appellant struck her in the face with his fist several times, knocking her to the floor, and put a knife to her face. He said: "I'll kill you." Mosby suffered a swollen eye and face and a bloody nose.

iii. *Annie Anderson*

Annie Anderson testified that she had a relationship with appellant beginning in 1994 or 1995. In 2000, appellant struck her in the face and then

started choking her. He said: "I will kill you, . . . bitch." Anderson suffered a broken eardrum. A few months later, during an argument, appellant hit her from behind and choked her until she passed out. In 2002, after Anderson and appellant married, appellant hit her in the mouth, splitting her lip. Anderson described appellant as very jealous, demanding and controlling. Once, appellant overheard Anderson talking to a male friend on the telephone and slapped her, knocking her to the floor. On another occasion, appellant hit her after she returned from a visit with a female neighbor.

In 2006, several years after Anderson and appellant divorced and after appellant and Hutton married, appellant called Anderson approximately three times. During these conversations, appellant asked if they could get back together and told Anderson that he and Hutton were having marital problems.

2. *Defense Evidence*

The defense called appellant to testify on his own behalf. Appellant testified that he and Hutton argued about her drinking and smoking and the interference of her family members in their relationship. Hutton did not want her family checking up on her and used appellant as a "shield" or excuse for ignoring them and their calls. Appellant disagreed with Hutton's decision to let Pearce live with them and moved into a hotel for one night to protest.[3]

Appellant testified that he and Hutton looked forward to the days when Pearce was scheduled to be away from the apartment at work, as she was on April 20. After Pearce left for work, he and Hutton engaged in sexual relations. Afterward, they napped briefly and when they awoke, at approximately noon,

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[3] Pearce testified appellant was absent for a week after she moved into the apartment.

appellant went out to get some beer.[4] When he returned, Hutton was passed out in bed with a burning cigarette in her hand. The sheet was smoldering and her hair was singed. Appellant jumped on Hutton, straddling her chest area, turned her away from the smoldering sheet and put out the cigarette with his hand. In grabbing Hutton, he "may have" squeezed her neck. After the fire was out, he realized that Hutton looked "unnatural." He "mash[ed]" or pressed her chest and checked for breathing and a pulse.

Appellant started to call 911 but decided to first clear out the evidence of alcohol and "weed." When he was finished, he decided to wrap Hutton in the bedsheet and take her to the hospital. However, on the way there, he became concerned that he would be blamed for her death. He drove to his church and sat in the parking lot for some time. He considered going to Hutton's family, but was afraid they would do something violent to him. After dark, he moved Hutton's body to the trunk. He found some plastic bags in the church's depository, where people left donated clothing, and wrapped the body in them. While he was in the church parking lot, he called Pearce and told her a lie about going to Pechanga with Hutton. On April 22, when he returned to the apartment to get his keyboard, he saw Lyles and lied to her about Hutton going to drop off the rent and about the two of them having been to Pechanga and possibly moving to Texas. After his detention, he told police officers another lie, that Hutton had gone to Texas with another man.

Appellant denied telling Annie Anderson that he wanted to get back together with her because he was having problems with Hutton. He recalled being physically abusive with Anderson on only one occasion, after she tried to run over

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[4] The prosecution introduced cell phone records indicating appellant and Hutton called each other's cell phones several times on the morning of April 20.

him with her car. He denied choking her. He denied beating Rosalind Mosby or threatening her with a knife. He said Mosby became injured when, during a struggle she initiated, he grabbed her and they both fell to the floor. He admitted hitting Tina Moody after she first attacked him, but denied choking her.

3. *Rebuttal*

A police detective who interviewed appellant after his arrest testified that appellant was specifically asked whether Hutton died accidentally. Appellant denied any knowledge of Hutton's death and denied knowing her body was in the trunk.

4. *Relevant Argument*

In closing, the prosecutor argued that express malice is demonstrated when a defendant puts his hands around the victim's neck and squeezes. Discussing the evidence of premeditation, the prosecutor stated: "[Appellant] calls Annie [Anderson] one week before the murder and says he has problems with his marriage. . . . He wanted out. On the 20th, he beats Wanda Hutton. [¶] He could have beat Wanda Hutton to death. That is not what caused her death. We know the blunt force trauma to the left side of her head, and that the rib fracture which was acute, the wrist fracture was acute, those did not cause her death. [¶] At some point, [appellant] made a conscious decision. He premeditated. He deliberated. He says, you know what? I am not going to beat her to death. It is taking too long. I am going to choke her. He made the conscious decision to take his hand, put it around her neck, and apply pressure. In each second that goes by, he is thinking to himself, should I keep my hand there? Should I continue to apply pressure? Should I not? Should I keep my hand there? Should I continue to apply pressure? Should I not? [¶] Now she is unconscious. Should I let go? Should I continue to

keep my hand on her neck? Should I let go? Each second that passes he is making a conscious decision. He is premeditating. He is deliberating whether he should continue doing it. That is why in this case this is first degree murder."

The defense argued that the evidence showed at most that appellant engaged in domestic violence and could be culpable of second degree murder: "Those acts, [the prosecutor] described them are not designed to kill you and make sure you are not here anymore. . . . Basically, what [the prosecutor] is saying with the domestic violence is that he smacks. He grabs them. He may grab them and hold them on their neck, but he let go. It is not his intent to kill them. It may be his intent to intimidate them or to control them, but not his [intent] to not have them be here anymore. That is when you move down to implied malice. If you believe he should know better and it is negligence, it would be second degree murder, not first degree murder."

5. *Relevant Instructions*

The jury was instructed pursuant to CALCRIM no. 521 that a defendant is guilty of first degree murder "if the People have proved that he acted willfully, deliberately, and with premeditation. The defendant acted willfully if he intended to kill. The defendant acted deliberately if he carefully weighed the considerations for and against his choice[,] and [] knowing the consequences decided to kill." With respect to premeditation, the jury was informed: "The defendant acted with premeditation if he decided to kill before committing the act that caused death. [¶] The length of time the person spends considering whether to kill does not alone determine whether the killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated. On the other

hand, a cold calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time."

C. *Verdict and Sentence*

The jury found appellant guilty of first degree murder.[5] The court sentenced appellant to a term of 25 years to life.

DISCUSSION

Appellant contends that the jury's finding of premeditated murder was not supported by the evidence. We disagree.

A. *Standard of Review*

"Review on appeal of the sufficiency of the evidence supporting the finding of premeditated and deliberate murder involves consideration of the evidence presented and all logical inferences from that evidence in light of the legal definition of premeditation and premeditation . . . . Settled principles of appellate review require us to review the entire record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- from which a

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[5] After several days of deliberations, the jury foreperson informed that court that the jurors could not unanimously agree on the degree of murder. The court inquired whether additional deliberations would be fruitful. The foreperson responded: "I think it is possible, but we might need some counsel, different wording, perhaps, of the instructions." Subsequently, the jury wrote out the following questions: (1) "What is meant by the phrase 'extent of the reflection'"; and (2) "Can you elaborate upon or clarify the phrase 'a decision to kill made rashly is not deliberate or premeditated.' Can you provide examples to illuminate this point." The court responded: "Words and phrases not specifically defined in the instruction are to be applied using their ordinary, everyday meanings. For example, 'reflection and rashly.'" The jury returned to its deliberations and reached a verdict the next court day.

reasonable trier of fact could find that the defendant premeditated and deliberated beyond a reasonable doubt. [Citations.] The standard of review is the same in cases such as this where the People rely primarily on circumstantial evidence. [Citation.] 'Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.' [Citations.]" (*People v. Perez* (1992) 2 Cal.4th 1117, 1124, quoting *People v. Bean* (1988) 46 Cal.3d 919, 932-933.)

B. *Premeditation*

An intentional killing is premeditated and deliberate "if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse." (*People v. Stitely* (2005) 35 Cal.4th 514, 543.) "'Deliberation'" refers to "careful weighing of considerations in forming a course of action" and "'premeditation'" means "thought over in advance. [Citations.]" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.) "'[T]he brutality of a killing cannot in itself support a finding that the killer acted with premeditation and deliberation.'" (*People v. Pantoja* (2004) 122 Cal.App.4th 1, 14, quoting *People v. Anderson* (1968) 70 Cal.2d 15, 24-25.) Specifically with respect to the present case, where the murder results from strangulation, the manner of killing cannot, standing alone, establish first degree murder. (*People v. Rowland* (1982) 134 Cal.App.3d 1, 7-10 [court reduced offense to second degree murder where victim strangled to death but no evidence of planning, motive or time and opportunity to reflect]; compare *People v. Davis* (1995) 10 Cal.4th 463, 510 [first degree murder verdict upheld

where evidence established defendant pursued victim and strangled her over period of five minutes].)

In *People v. Anderson, supra*, 70 Cal.2d 15, the Supreme Court observed: "The type of evidence which this court has found sufficient to sustain a finding of premeditation and deliberation falls into three basic categories: (1) facts about how and what defendant did *prior* to the actual killing which show that the defendant was engaged in activity directed toward, and explicable as intended to result in, the killing -- what may be characterized as 'planning' activity; (2) facts about the defendant's *prior* relationship and/or conduct with the victim from which the jury could reasonably infer a 'motive' to kill the victim, which inference of motive, together with facts of type (1) or (3), would in turn support an inference that the killing was the result of 'a pre-existing reflection' and 'careful thought and weighing of considerations' rather than 'mere unconsidered or rash impulse hastily executed' [citation]; (3) facts about the nature of the killing from which the jury could infer that the *manner* of killing was so particular and exacting that the defendant must have intentionally killed according to a 'preconceived design' to take his victim's life in a particular way for a 'reason' which the jury can reasonably infer from facts of type (1) or (2). [¶] Analysis of the cases will show that this court sustains verdicts of first degree murder typically when there is evidence of all three types and otherwise requires at least extremely strong evidence of (1) or evidence of (2) in conjunction with either (1) or (3)." (70 Cal.2d at pp. 26-27.)

In later decisions, the Supreme Court explained that the standards in *People v. Anderson* represented guides to analysis rather than normative rules. In *People v. Thomas* (1992) 2 Cal.4th 489, 517, the court stated: "Unreflective reliance on *Anderson* for a definition of premeditation is inappropriate. The *Anderson* analysis was intended as a framework to assist reviewing courts in assessing whether the

evidence supports an inference that the killing resulted from preexisting reflection and weighing of considerations. It did not refashion the elements of first degree murder or alter the substantive law of murder in any way." In *People v. Perez*, the Court stated: "The goal of *Anderson* was to aid reviewing courts in assessing whether the evidence is supportive of an inference that the killing was the result of preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse. [Citation.] [¶] In identifying categories of evidence bearing on premeditation and deliberation, *Anderson* did not purport to establish an exhaustive list that would exclude all other types and combinations of evidence that could support a finding of premeditation and deliberation. . . . The *Anderson* factors, while helpful for purposes of review, are not a sine qua non to finding first degree premeditated murder, nor are they exclusive." (*People v. Perez*, *supra*, 2 Cal.4th at p. 1125.) We review the record with these principles in mind.

From the evidence presented, the jury could reasonably have inferred that appellant had a motive for killing Hutton: his dissatisfaction with his marriage, which he expressed to Anderson not long before Hutton's death, and the enmity he generally felt toward women with whom he had been involved in romantic relationships, to which Anderson, Moody and Mosby attested. (See *People v. Linkenauger* (1995) 32 Cal.App.4th 1603, 1613 [evidence of marital discord and prior assaults "had a tendency in reason to show appellant's intent to beat, torture, and ultimately murder [his wife]"]; accord, *Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 586.) Evidence of planning was minimal, but not entirely absent: it was apparent from appellant's testimony that he was aware Pearce would be out for the day, and that no one would be present to witness or prevent his attack on Hutton. Finally, the physical evidence indicates that even assuming appellant did not pre-plan his actions, he had sufficient time for reflection during the attack itself. The autopsy demonstrated that Hutton's assailant struck her first and then choked her

until she expired. According to Dr. Pena, asphyxiation resulting in death would take a minimum of 45 seconds and possibly much longer based on the victim's physical condition and struggles. Thus, appellant had a period of time to consider his options after striking Hutton and before he commenced strangling her, as well as after she lost consciousness but before she expired. Adding these periods together, the jury could reasonably have concluded that appellant had ample opportunity to reflect upon and carry out an intended act of murder. (See *People v. Stitely*, *supra*, 35 Cal.4th at p. 543 [requisite reflection to support deliberation and premeditation "need not span a specific or extended period of time"]; *People v. Koontz*, *supra*, 27 Cal.4th at p. 1080, quoting *People v. Mayfield* (1997) 14 Cal.4th 668, 767 [""""The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly. . . ." [Citations.]""].)

We find support for our conclusion that a finding of first degree murder may be supported by evidence of a very brief period of reflection in *People v. San Nicolas* (2004) 34 Cal.4th 614. The defendant there, while cleaning up from killing the first victim, spotted the second victim in a reflection in the mirror and immediately turned and stabbed her. The Supreme Court held that because "[t]he act of planning -- involving deliberation and premeditation -- requires nothing more than a 'successive thought[] of the mind,'" the brief period between defendant's seeing the second victim's reflection and stabbing her was "adequate for defendant to have reached the deliberate and premeditated decision to kill [her]." (*People v. San Nicolas, supra*, 34 Cal.4th at pp. 629, 658, quoting *People v. Sanchez* (1864) 24 Cal. 17, 30.) Similarly, in *People v. Thomas*, *supra*, 2 Cal.4th 489, the Supreme Court held that there was substantial evidence to support that the defendant deliberated and premeditated prior to shooting the second victim, where the evidence established that in order to fire a second shot, he

needed to open the rifle's bolt to eject the expended casing and hand load a second round into the chamber. The facts "suggest[ed] planning in the loading and reloading of the rifle." (*People v. Thomas, supra,* 2 Cal.4th at p. 517.) The Supreme Court also found sufficient time for premeditation in *People v. Memro* (1995) 11 Cal.4th 786, where the defendant, caught in the act of murdering the first victim, heard the second victim scream and ran a distance of 178 feet to cut his throat. (*Id*. at pp. 862-863.) The time appellant had to contemplate his actions was as least as long as the defendants had in *San Nicolas, Sanchez* and *Thomas*. An examination of the record in light of these authorities satisfies us that there was sufficient evidence to warrant the jury's finding that the murder was deliberate and intentional.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.